FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing regulation, or amendment to the regulation, is necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly.

Adult Oriental fruit flies have recently been trapped in the County of Orange. On October 16, 2006, three adult male Oriental fruit flies were taken from traps in the Santa Ana area of Orange County. On October 17, 2006, an adult male Oriental fruit fly was taken from a trap in the Santa Ana area of Orange County. On November 6, 2006, three adult male Oriental fruit flies were taken from traps in the Santa Ana area of Orange County. On November 7, 2006, two female adult Oriental fruit flies were taken from traps in the Santa Ana area of Orange County. The detection of numerous adult male Oriental fruit flies is indicative of an incipient infestation of Oriental fruit fly in the Santa Ana area of Orange County.

Oriental fruit fly has been established in Hawaii, since 1946, where it is a major pest of agriculture, particularly on mangoes, avocados and papayas. Maggots have been found in over 125 kinds of fruits and vegetables in Hawaii alone. The introduction of this pest threatens numerous crops in California, including apples, apricots, avocados,

cherries, citrus, figs, nectarines, peaches, pears, plums and tomatoes. It has been estimated that the cost of not eradicating Oriental fruit fly in California would range from $44 to $176 million in crop losses, additional pesticide use, and quarantine requirements. Oriental fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has been eradicated.

Females lay eggs in groups of 3 to 30 under the skin of host fruits and vegetables; the female can lay more than 1,000 eggs in her lifetime. Time taken for development depends on the ambient temperature. Larvae tunnel through the fruit feeding on the pulp, shed their skins twice, and emerge through exit holes in approximately 10 days. The larvae drop from the fruit and burrow 2 to 3 cm. into the soil to pupate. In 10 to 12 days, adults emerge from these puparia. The newly emerged adult females need 8 to 12 days to mature sexually prior to egg laying. Breeding is continuous, with several annual generations. Adults live 90 days on the average and feed on honeydew, decaying fruit, plant nectar, bird dung, and other substances. The adult is a strong flyer recorded to travel up to 30 miles in search of food and sites to lay eggs. Transport of fruit infested with eggs or larvae also allows the fly to spread artificially and infest new areas very quickly.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the United States Department of Agriculture or other states or countries enact quarantine against California products which can host and carry the fly.

The Oriental fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be

interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this is a ministerial action for an emergency and an action also for the protection of natural resources and the environment by a regulatory agency and is therefore exempt from the requirements of the CEQA statutes, under PRC Section 21080, and under Sections 15268, 15269, 15307 and 15308 of the CEQA Guidelines.

The proposed quarantine area includes the initial detection sites and a buffer zone extending approximately 4-1/2 miles in each direction from each detection site. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The boundary was drawn jointly by the United States Department of Agriculture, The California Department of Food and Agriculture, and the Orange County Agricultural Commissioner, and the proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of Oriental fruit fly to noninfested areas.

This proposed amendment of Section 3423(b) will establish approximately 93 square miles surrounding the infestation in the Santa Ana area of Orange County as the area under quarantine for Oriental fruit fly. To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary immediately to regulate movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area. Therefore, it is necessary to amend this regulation to establish a new quarantine area in the Santa Ana area of Orange County as an emergency action.

Authority and Reference Citations

Section 3423(b):

Authority: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.

Reference: Sections 5301, 5302 and 5322, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to protect the agricultural industry of California from the spread of pests. The Secretary may make and enforce such regulations as he deems necessary to prevent any plant or thing which is, or is liable to be, infested by or which might act as a carrier of any pest, from passing over any quarantine boundary which is established.

Section 3423. Oriental Fruit Fly Interior Quarantine.

Existing regulations quarantine the Rialto area of San Bernardino under subsection 3423(b) as the quarantine area for Oriental fruit fly. This amendment will add approximately 93 square miles surrounding the Santa Ana area of Orange County to the area under quarantine for Oriental fruit fly. The effect of the change is to provide authority for the State to regulate movement of hosts of Oriental fruit fly from, into and within that area to prevent the artificial spread of the fly to noninfested areas to protect California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3423 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Orange County Agricultural Commissioner requested the change in regulations.

Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.